

(A) The shipper furnishes the rail cars, unless the rail cars are leased from the carrier; or,

(B) The contract is restricted to certain services which do not entail car supply.

(7) *Base rates and charges.* (i) Identify the specific base rates and/or charges. This is satisfied by identifying the specific tariff provisions which would apply without the contract.

(ii) Summarize escalation provisions.

(8) *Volume.* Identify all volume, car and/or train size requirements as set forth in the contract including:

(i) Movement type (single car, multiple car, unit train).

(ii) Minimum and actual volume requirements under contract for the applicable period(s) (annual, quarterly, etc.).

(iii) Volume breakpoints affecting the contract.

(9) *Special features.* Identify existence (but not the terms or amount) of special features such as transit time commitments, credit terms, discounts, switching, special demurrage, guaranteed or minimum percentages, etc.

[53 FR 5380, Feb. 24, 1988, as amended at 57 FR 40622, Sept. 4, 1992]

**§ 1313.11 Contract summary content—forest products and paper.**

(a) Contract summaries for forest products and paper must contain the following terms in the order named. These requirements also apply to amended contract summaries.

(b)(1) *Carrier names.* A list, alphabetically arranged, of the corporate names of all carriers that are parties to the contract plus the addresses for service of complaints [must be submitted].

(2) *Specific commodity.* The specific commodities to be transported under the contract must be identified except that broad commodity descriptions such as “forest products” are permitted only to the extent that is the commodity description in the contract.

(3) *Specific origins and destinations.* (i) Each specific origin and destination point to and from which the contract applies must be shown except that references to tariffs or broad geographic descriptions such as “all stations in Oregon” are permitted only to the extent such terms are actually used in

the contract and such origins and destinations are subject to specific identification by reference to tariffs or broad geographic descriptions. Tariff references must be accompanied by some geographic reference. Vague descriptions such as “various points in Oregon” are prohibited.

(ii) Each port must be identified.

(4) *Contract duration.* (i) If applicable, the date on which the transportation service has begun under a contract before the date such contract is filed with or approved by the Commission.

(ii) The date on which the contract services became applicable to the transportation services provided under the contract.

(iii) Termination date of the contract. If the terms of the contract provide for automatic extension or renewal, such information must be shown in connection with the termination date.

(5) *Rail car data.* The information required under § 1313.10(b)(6) must be provided.

(6) *Base rates and charges.* (i) Identify the specific base rates and/or charges. This is satisfied by identifying the general tariff provisions, or the general tariff provisions which would apply without the contract.

(ii) Identify existence of, but not terms or amount of, any movement type (e.g. single car, multiple car, unit train), minimum volume requirement (if applicable), or escalation provisions.

(7) *Special features.* Identify existence (but not the terms or amount) of special features such as transit time commitments, guaranteed car supply, minimum percentage of traffic requirements, credit terms, discounts, etc.

[53 FR 5380, Feb. 24, 1988, as amended at 57 FR 40622, Sept. 4, 1992]

**§ 1313.12 Contract summary content—port traffic (other than agricultural commodities, forest products, and paper).**

(a) Contract summaries for other commodities or services involving a port must contain the information required in § 1313.11(b) (1), (2), (4), (6) and (7) and 1313.10(b)(6). In addition, the port shall be named and the tariff mileage rounded to the nearest 50 miles

shall be disclosed (or, at the contracting parties' option, the origin and destination shall be specified). The required information shall be disclosed for each movement involving multiple origins and destinations. These requirements also apply to amended contract summaries.

(b) [Reserved]

**§ 1313.13 Contract summary content—other commodities or services not involving a port.**

(a) Contract summaries for other commodities not involving a port must contain the commodity or commodities to be transported under the contract and the information required in § 1313.11(b) (1) and (4), and § 1313.10(b)(6). Paragraph (b)(7) of § 1313.11 is applicable only to the extent that service requirements are placed in the contract. These requirements also apply to amended contract summaries.

(b) [Reserved]

**§ 1313.14 Informal discovery.**

(a) Prior to filing a petition for formal discovery under 49 CFR 1313.15, a petitioner may request discovery from the carrier.

(b) The carrier must promptly grant or deny the request.

(c) Agreements between carriers and shippers for informal discovery are permitted under these rules.

**§ 1313.15 Contract discovery.**

(a) *Petition.* A petition to discover contract provisions must show that petitioner is a shipper or port, has standing to file a complaint under 49 U.S.C. 10713(d)(2) (A) or (B), and that petitioner is affected by the contract. The following information will be considered in making a determination on whether to permit discovery.

(1) *Standing.* Identify the provision(s) in 49 U.S.C. 10713(d) under which petitioner has standing to file a complaint.

(2) *Affected party.* An affected party is one that is an actual or potential participant in the relevant market. The following information is relevant to making that determination and should be provided.

(i) Nature and volume of petitioner's relevant business.

(ii) Relevant commodities petitioner ships or receives;

(iii) Comparisons between petitioner's commodities, locations of shipping facilities and serving carriers, actual or potential traffic patterns and serving carrier(s), with the traffic patterns and serving carrier(s) identified in the contract summary. State whether petitioner is a consignor or consignee.

(iv) Showing of an ability to ship the commodity in question at a time generally simultaneous with the contract at issue.

(v) Any additional information petitioner considers appropriate to support its request, including prior negotiations, if any.

(vi) Demonstrate how and to what degree the petitioner's relevant business may be affected by the contract terms as disclosed in the summary.

(vii) Proof of actual injury is not required to satisfy this rule.

(3) *Demonstrated need.* (i) With regard to the grounds for complaint under 49 U.S.C. 10713(d)(2)(B), the demonstrated need test applies to contracts for forest products and paper, non-agricultural port traffic, and other commodities. The test does not apply to agricultural commodity contracts.

(ii) A petitioner seeking disclosure of non-agricultural contract information must show that the contract terms it seeks are relevant to its potential challenge to the contract.

(iii) As car data is published in the contract summary, a petition for further disclosure on the basis that the contract may impair the contracting carrier's common obligation must establish a nexus between the information sought and the common carrier obligation. Before information regarding special features will be disclosed, a petitioner must show how the special feature or certain forms of that special feature could impair the contracting carrier's common carrier obligation and how that impairment may affect the petitioner. On receiving such a petition, the carrier must furnish to the petitioner and the Commission the data required by § 1313.10(b)(6)(i)(D).